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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAURICA EDUARDUS THEODORUS van ESBROECK,
HENRICUS FRANCISCUS JACOBUS MARIA van der EERDEN,
and ADRIANUS JOSEPHES van den NIEUWELAAR

Appeal 2010-002480
Application 09/865,180
Technology Center 1700

Before CHUNG K. PAK, JEFFREY T. SMITH, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's refusal to allow claims 30, 63 through 65, 72, 77, and 78, all of the claims pending in the above-identified application.¹ We have jurisdiction under 35 U.S.C. § 6.

¹ See Corrected Appeal Brief ("App. Br.") filed April 7, 2009, 5-6; Examiner's Answer ("Ans.") dated June 23, 2009, 2; and the Examiner's Interview Summary dated June 23, 2009, 3.

STATEMENT OF THE CASE

The subject matter on appeal is directed to “devices for treating meat and meat products...which treatment involves adding an additive to the product” (Spec. 1, para. 0003). Details of the appealed subject matter are recited in representative independent claims 30 and 77 reproduced from the Claims Appendix to the Appeal Brief as shown below:

30. A device for applying multiple coatings of different marinades in overlapping layers onto meat products comprising:

- a. a conveyor device comprising a track and a plurality of meat product holders adapted to hold meat products, wherein the meat product holders are displaceable along the track to convey meat products and wherein each meat product holder comprises a rotary member adapted to rotate the meat product about a vertical axis;
- b. a plurality of marinade application stations positioned one behind another along the track of the conveyor device, so that the meat products sequentially pass along the marinade application stations;
- c. at least one of the marinade application stations adapted to apply a different marinade than the other marinade application stations;
- d. at least one of the marinade application stations comprising at least one nozzle for emitting at least one jet of at least one marinade;

wherein the marinade application stations are adapted to apply marinade onto a meat product conveyed by the conveyor device and rotated about the vertical axis by the meat product holder to uniformly coat the outer surface of the meat product with overlapping layers of different marinades.

77. A device for applying multiple coatings of different marinades in overlapping layers onto meat products, the device comprising:

- a. a conveyor device comprising a track and a plurality of meat product holders, each meat product holder adapted to hold one or

more meat products suspended downwardly from the meat product holder, wherein each meat product holder is displaceable along the track to convey meat products, and wherein each meat product holder comprises a rotary member adapted to rotate the meat product about a vertical axis;

b. a plurality of marinade application stations positioned one behind another along the track of the conveyor device, so that the meat products sequentially pass along the marinade application stations;

c. at least one of the marinade application stations being associated with a different marinade than the other marinade application stations, wherein the marinade application stations, are adapted to apply different marinades successively to the outer surface of the meat product; and

d. at least one of the marinade application stations comprising at least one nozzle for emitting at least one jet of at least one marinade;

wherein the marinade application stations are adapted to apply marinade onto a meat product conveyed by the conveyor device and rotated about the vertical axis by the meat product holder to uniformly coat the outer surface of the meat product with overlapping layers of different marinades.

As evidence of unpatentability of the claimed subject matter, the Examiner relies on the following prior art references at page 3 of the Answer:

Snowden	US 3,631,563	Jan. 4, 1972
Dew	US 4,196,221	Apr. 1, 1980
Gorl	US 4,413,279	Nov. 1, 1983
Vincent	GB 2 177 585 A	Jan. 28, 1987
Janssen	WO 93/13671	Jul. 22, 1993
Ludwig	US 5,449,524	Sep. 12, 1995
Newman	US 5,668,634	Sep. 16, 1997

Appellants seek review of the following grounds of rejection set forth in the Answer:

1. Claim 30 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Dew, Janssen, Ludwig, and Snowden;
2. Claims 63 and 72 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Dew, Janssen, Ludwig, Snowden, and Vincent;
3. Claims 64 and 65 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Dew, Janssen, Ludwig, Snowden, and Newman or Gorl;
4. Claim 77 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Dew, Janssen, and Ludwig; and
5. Claim 78 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Dew, Janssen, Ludwig, and Vincent. (*See* App. Br. 10-11.)

PRINCIPLES OF LAW

The Examiner has the initial burden of establishing a *prima facie* case obviousness under 35 U.S.C. § 103(a). *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.”).

“A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art.” *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

Establishing a *prima facie* case of obviousness of an invention comprising a combination of known elements requires “an apparent

reason to combine the known elements in the fashion claimed.” *KSR Int’l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

RELEVANT FACTUAL FINDINGS, ISSUE, ANALYSIS, AND CONCLUSION

As found by the Examiner at page 3 of the Answer, Dew teaches an apparatus for processing food products, including poultry products, which comprises any known conveyor device 4 having shackles 5 for holding poultry products 6, and sprayers 3 connected to a pressurized water source and electrically connected electrostatic generator 8 to spray water in an electrical field for the purpose of scalding and/or chilling the poultry products. (*See* the Figure, together *with* col. 1, ll. 6-10, col. 5, ll. 4-22 and 46-61, and col. 6, ll. 48-60.) Dew also teaches that “the water can include one or more additives to preserve, color, flavor, protect (e.g., antioxidant) or improve ... the products to be processed by spraying.” (*See* col. 4, l. 57 to col. 5, l. 3 and col. 6, ll. 61-63.)

As acknowledged by the Examiner, Dew does not mention that its conveyor device employs a holder having a rotary member adapted to rotate the poultry products about a vertical axis and a plurality of marinade application stations positioned along the track of the conveyor device, with at least one of the marinade application stations adapted to apply a different marinade than the other marinade application stations, to provide overlapping uniform coatings or layers of different marinades on *the outer surface* of the poultry products as

required by claims 30 and 77. (*See* Ans. 3-4.) To remedy these differences from the claimed invention, the Examiner relied on Janssen for teaching a conveyor device employing a holder having a rotary member adapted to rotate poultry products about a vertical axis and Ludwig and/or Snowden for teaching a plurality of marinade application stations positioned along the track of a conveyor device, with at least one of the marinade application stations adapted to apply a different marinade than the other marinade application stations, to provide overlapping uniform coatings or layers of different marinades on the outer surface of poultry products. (*See* Ans. 4-8). The Examiner did not rely on Vincent, Newman, and Gori to remedy the above differences from the claimed invention. (*See* Ans. 3-19.)

Relying on the above teachings, the Examiner concluded that it would have been obvious to employ the conveyor of the type taught by Janssen as the known conveyor device of Dew and employ the plurality of marinade application stations taught by Ludwig, with or without at least one oscillating nozzle taught by Snowden for such marinade application stations, in lieu of the single flavored water spraying station of Dew. (*See* Ans. 4-8)

On the other hand, Appellants contend, *inter alia*, that Ludwig and/or Snowden do not provide any apparent reason or suggestion for employing a plurality of marinade application stations having spray nozzles positioned along the track of a conveyor device, with at least one of the marinade application stations adapted to apply a different marinade than the other marinade application stations, to provide

overlapping uniform coatings or layers of different marinades on the outer surface of poultry products in the apparatus of Dew as required by claims 30 and 77. (*See App. Br. 14-17 and 20-23.*)

The dispositive question is: Did the Examiner err in determining that one of ordinary skill in the art would have been led to employ a plurality of marinade application stations having spray nozzles positioned along the track of a conveyor device, with at least one of the marinade application stations adapted to apply a different marinade than the other marinade application stations, to provide overlapping uniform coatings or layers of different marinades on the outer surface of poultry products in the apparatus of Dew as required by claims 30 and 77 within the meaning of 35 U.S.C. § 103(a)? On this record, we answer this question in the affirmative.

As correctly pointed out by Appellants at pages 14 through 17 and 20 through 23 of the Appeal Brief, one of ordinary skill in the art would not have been led to use the marinade needle injection stations taught by Ludwig with the spray nozzle system taught by Snowden and/or Dew. Ludwig, unlike Dew or Snowden, teaches the needle injection of different marinade solutions separately *into different parts* (e.g., breast and legs) of poultry carcasses. Nowhere does Ludwig indicate or suggest that its marinade needle injection stations are to be used with the spray nozzles of the type taught by Snowden and/or Dew, for the spray nozzles taught by Snowden and/or Dew are used for coating solutions or steam on the exterior of the poultry carcasses,

rather than injecting marinade solutions into the interior of the poultry carcasses as required by Ludwig.²

Even if the spray nozzles taught by Snowden and/or Dew were to be used with the marinade needle injection stations taught by Ludwig as proposed by the Examiner, the Examiner still has not demonstrated that there is a reason or suggestion to arrange the spray nozzles taught by Snowden and/or Dew in the claimed manner to provide overlapping uniform coatings or layers of different marinades on *the outer surface* of poultry products. As correctly argued by Appellants at pages 14 through 17 and 20 through 23 of the Appeal Brief, Ludwig requires that the spray nozzles be arranged in a manner to coat different marinade solutions on different parts of the poultry carcasses.

Accordingly, we concur with Appellants that the Examiner has not carried the burden of establishing a prima facie case of obviousness regarding the subject matter recited in claims 30, 63 through 65, 72, 77, and 78 within the meaning of 35 U.S.C. § 103(a).

ORDER

In view of the foregoing, it is

² As also correctly argued by Appellants at page 16 of the Appeal Brief, Snowden teaches using at least one oscillated nozzle for spraying steam, i.e., high temperature water, to a fowl that must be held in a manner to avoid pivoting. Nowhere has the Examiner demonstrated that the nozzle system taught by Snowden is useful with Janssen's conveying device having a rotating or pivoting poultry carcasses holder.

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ORDERED that the decision of the Examiner rejecting claims 30, 63 through 65, 72, 77, and 78 under 35 U.S.C. § 103 is REVERSED.

REVERSED

sld